

(Published in the Garden City Telegram on the \_\_\_\_ day of \_\_\_\_\_, 2006)

ORDINANCE NO. \_\_2339\_\_

AN ORDINANCE REGULATING SMOKING IN DESIGNATED PUBLIC PLACES; PROVIDING PENALTIES FOR VIOLATIONS; ESTABLISHING NEW ARTICLE IV TO CHAPTER 50 AND NEW CODE SECTIONS 50-72 TO 50-81; ALL TO THE CODE OF ORDINANCES OF THE CITY OF GARDEN CITY, KANSAS.

BE IT ORDAINED by the Governing Body of the City of Garden City, Kansas:

**SECTION 1.** That Article IV of Chapter 50 is hereby established to read as follows:

**ARTICLE IV. SMOKING IN DESIGNATED PUBLIC PLACES**

**Section 50-72. Purpose.**

The purpose of this Article is to (1) improve and protect the public's health by eliminating smoking in designated public places; (2) acknowledge the right of nonsmokers to breathe smoke-free air; and (3) recognize that the need to breathe smoke-free air shall have priority over the choice to smoke.

**Section 50-73. Definitions.**

The following words and phrases, whenever used in this Article, shall be construed as defined in this Section:

- A. Educational Facility shall mean any building, structure, or athletic field and seating area, owned by a unified school district or a community college.
- B. Enclosed Area means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of door or passage ways) which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, "office landscaping" or similar structures.

For the purposes of this Article, the following shall not be considered

an enclosed area:

1. Rooms or areas enclosed by walls or windows having neither a ceiling nor a roof and which are completely open to the elements and weather at all times.

2. Rooms or areas enclosed by walls or windows and a roof or ceiling, having an opening at least twenty percent (20%) of the total perimeter wall area completely and permanently open to the elements and weather.

C. Food Service Establishment shall mean any place in which food is served or is prepared for sale or service to the public on the premises or elsewhere. Such term shall include, but not be limited to, restaurant, coffee shop, cafeteria, café, grill, sandwich shop, tavern, private club, and any other private, public or nonprofit organization or institution routinely serving food and any other eating or drinking establishment or operation where food is served or provided for the public with or without charge.

D. Licensed Premises shall mean any premises where alcoholic liquor or cereal malt beverages, or both, by the individual drink as defined by K.S.A. Chapter 41 and amendments thereto, is served or provided for consumption or use on the premises with or without charge. Such term shall include drinking establishments, Class A Private Clubs, Class B Private Clubs, and cereal malt beverage retailers, all as defined by K.S.A. Chapter 41, and amendments thereto, and Chapter 6 of this Code.

E. Public Assembly Seating shall mean any bleacher section, grandstand, or other seating, affixed and permanent in nature located in the city, on any property owned or leased by any municipality, whether city, county, state, school district or community college.

F. Smoking means possession of a cigarette, cigar, or pipe partially or wholly consisting of or containing burning vegetation, or possession of any other device containing burning vegetation that is used for the introduction of smoke from the burning vegetation into the human body. For the purposes of this definition, the term vegetation includes, but is not limited to, tobacco.

#### **Section 50-74. Prohibition of Smoking in Public Places.**

Smoking shall be prohibited in the following described public places within the city:

- A. Food service establishments, and licensed premises, as defined in section 50-73 (C) and (D), excluding areas of a food service establishment or licensed premises that are not enclosed, such as patios, outdoor dining areas, and courtyards
- B. Every room, chamber, place of meeting or public assembly under the control of any board, council, commission, committee, including joint committees, or agencies of the city or any political subdivision of the State during such time as a public meeting is in progress.
- C. Private clubs and fraternal organization facilities, not otherwise defined as a licensed premise.
- D. Educational facilities.
- E. Public assembly seating areas.
- F. Outside of any of the above, within fifty (50) feet of the primary public entrance or exit, as applicable.

#### **Section 50-75. Additional Declaration of Non-Smoking Establishment.**

Notwithstanding any other provision of this Article, any owner, operator, manager or other person who controls any establishment described in this Article may declare that entire establishment as a non-smoking establishment.

#### **Section 50-76. Application of Article to City-Owned Facilities.**

All enclosed facilities owned by the city shall be non-smoking at all times notwithstanding other provisions of this Article.

#### **Section 50-77. Posting of Signs.**

- A. The owner, manager or other person having control of premises where smoking is prohibited by this Article, shall have a conspicuously posted sign clearly stating that smoking is prohibited at each entrance and within the building or other areas where smoking is prohibited.
- B. The owner, manager or other person having control of premises where smoking is allowed and not prohibited by this Article, shall have a conspicuously posted sign clearly stating that smoking is allowed at each entrance and within the building or other areas where smoking is allowed.

### **Section 50-78. Enforcement.**

- A. The Chief of Police, Garden City Police Department, or his or her designated agent shall be responsible for enforcing the provisions of this Article within the city.
- B. Any person may register a complaint under this Article to initiate enforcement with the Chief of Police.
- C. Any owner, manager, operator or employee of any premises regulated by this Article shall be responsible for informing persons violating this Article that smoking is prohibited on the premises.

### **Section 50-79. Violations and Penalties.**

- A. It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this Article to fail to comply with all of its provisions.
- B. It shall be unlawful for any person who owns, manages, operates or otherwise controls any premises subject to regulation under this Article to allow smoking to occur where prohibited by this Article. Any such person allows smoking to occur under this section if he or she:
  - 1. Has knowledge that smoking is occurring, and;
  - 2. Acquiesces to the smoking under the totality of the circumstances.
- C. It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this Article.
- D. Any person who violates any provision of this Article, except Section 50-77, shall be guilty of a Class C violation punishable as follows:
  - 1. A fine not exceeding One Hundred Dollars (\$100.00) for the first violation.
  - 2. A fine not exceeding Two Hundred Dollars (\$200.00) for a second violation within a one (1) year period of the first violation.
  - 3. A fine not exceeding Five Hundred Dollars (\$500.00) for a third or subsequent violation within a one (1) year period of the first violation.
  - 4. For the purposes of this subsection, the number of violations within a year shall be measured by the date the smoking violations occur.

### **Section 50-80. Other Applicable Law.**

This Article shall not be interpreted nor construed to permit smoking where it is otherwise restricted by other applicable laws.

**Section 50-81. Severability.**

If any provision, clause, sentence or paragraph of this Article or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are declared to be severable.

**SECTION 2.** This ordinance shall be in full force and effect from and after January 8, 2007, and following its publication in the Garden City Telegram, the official city newspaper.

APPROVED AND PASSED by the Governing Body of the City of Garden City, Kansas, this 8<sup>th</sup> day of August, 2006.

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GARY E. FULLER, Mayor

ATTEST:

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STACEY L. FRIZZELL, City Clerk

APPROVED AS TO FORM:

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RANDALL D. GRISELL, City Counselor

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## THE REGULAR MEETING OF THE BOARD OF COMMISSIONERS

City of Garden City  
August 8, 2006

A pre-meeting was held with department heads and directors at 11:00 a.m. in the large meeting room at the City Administration Center to facilitate Governing Body member concerns or questions with regard to agenda items. These pre-meetings are attended by the media and open to the public.

The regular meeting of the Board of Commissioners of the City of Garden City was held at 1:00 p.m. at the City Administrative Center on August 8, 2006 with all members present except Commissioner Behan. The meeting was opened with the Pledge of Allegiance to the Flag and Invocation by Mayor Fuller.

Commissioner Perkins moved to approve the minutes of the last meeting. Commissioner Crase seconded the motion. The vote was taken by yeas and nays and recorded as follows:

Behan	Crase	Fuller	Mesa	Perkins
Absent	Yea	Yea	Yea	Yea

Mayor Fuller presented Ms. Denise Galarraga, Director of the Finney County Public Library, a check for \$5000 received for winning the best lunch stop during the National Guard Great Race, 2006.

Commissioner Mesa moved to approve the request from Pastor Bernal, on behalf of the Garden City Spanish Seventh Day Adventist Church, for the use of Stevens Park on Saturday, August 26 for a Christian concert from 12:00 noon until 8:00 p.m., with access to electricity, additional solid waste containers and a waiver to the noise ordinance. Commissioner Perkins seconded the motion. The vote was taken by yeas and nays and recorded as follows:

Behan	Crase	Fuller	Mesa	Perkins
Absent	Yea	Yea	Yea	Yea

Mayor Fuller moved to approve the request from Angelica Castillo-Hahn on behalf of the Community Mexican Fiesta Association to authorize the Mayor to proclaim the month of September 15 – October 15, 2006 as Hispanic Heritage Month. Commissioner Perkins seconded the motion. The vote was taken by yeas and nays and recorded as follows:

Behan	Crase	Fuller	Mesa	Perkins
Absent	Yea	Yea	Yea	Yea

Mayor Fuller moved to approve the request from Ms. Colleen Sternberger, President of the Friends of the Lee Richardson Zoo, for the temporary closure of the Zoo on September 9, 2006 to facilitate the preparations for the “Wild Affair” fundraising event to be held that evening. Commissioner Mesa seconded the motion. The vote was taken by yeas and nays and recorded as follows:

Behan	Crase	Fuller	Mesa	Perkins
Absent	Yea	Yea	Yea	Yea

Commissioner Perkins moved to approve the request from Pastor Nunez, Iglesia Crisiana Principe De Paz, for a waiver to the noise ordinance at 416 Buffalo Jones on August 11, 2006 from 7:00-11:00 p.m., and all day August 12 & 13, 2006. Mayor Fuller seconded the motion. The vote was taken by yeas and nays and recorded as follows:

Behan	Crase	Fuller	Mesa	Perkins
Absent	Yea	Yea	Yea	Yea

City Manager Bob Halloran noted the following meetings:

- ✓ Tuesday, August 8 from 5 pm – 8 pm for St. Catherine Hospital’s 75<sup>th</sup> Anniversary Community Picnic. (Picnic will be held on Spruce St. between Fourth St. and Sixth St.)
- ✓ Monday, August 21 for a joint meeting with Finney County and the City of Holcomb – TBA.
- ✓ August 19 for Art in the Park, in Stevens Park.
- ✓ August 26 & 27 for the Tumbleweed Festival at the Lee Richardson Zoo.
- ✓ August 26 & 27 for the Hot Air Balloon Classic.
- ✓ September 9 -13 for the Annual ICMA Conference in San Antonio.
- ✓ September 15 – 17 for the 80<sup>th</sup> Annual Community Fiesta celebration. Parade will be at 10 am on Saturday, September 16.
- ✓ City Commission meeting amendments to schedule; Thursday, September 7, 2006 at 1:00 p.m., Friday, October 13, 2006 at 9:00 a.m. and Thursday, December 28, 2006 at 1:00 p.m. all in the Commission Chambers.

City Manager Halloran announced The Friends of the Lee Richardson Zoo board appointed Ms. Stacey Huber to the position of Development Director to begin on August 1, 2006, and the appointment of Ms. Michelle D. Stegman to the position of Human Resources Director for the City of Garden City to begin on August 21, 2006.

The City has received its second quarterly franchise payment from Cox Communications in the amount of \$51,617.08.

Appropriation Ordinance No. 2179-A. “AN APPROPRIATION ORDINANCE MAKING CERTAIN APPROPRIATIONS FOR CERTAIN CLAIMS.”, was read and considered section by section. Commissioner Perkins moved to approve and pass Appropriation Ordinance No. 2179-A. Commissioner Crase seconded the motion. The vote was taken by yeas and nays and recorded as follows:

Behan	Crase	Fuller	Mesa	Perkins
Absent	Yea	Yea	Yea	Yea

Mayor Fuller opened the Public Hearing on the matter of the final consideration of the proposed 2007 Budget for the City of Garden City.

There being no one present from the community to make comments, Mayor Fuller closed the Public Hearing.

Mayor Fuller moved to approve the proposed 2007 Budget and to authorize the signing of the Budget Certificate and delivery to the County Clerk and the State of Kansas. Commissioner Mesa seconded the motion. The vote was taken by yeas and nays and recorded as follows:

Behan	Crase	Fuller	Mesa	Perkins
Absent	Yea	Yea	Yea	Yea

Ordinance No. 2335. “AN ORDINANCE OF THE CITY OF GARDEN CITY, KANSAS APPROVING THE REZONING OF LAND FROM “C-O” OFFICE AND SERVICE BUSINESS DISTRICT TO “R-4” MULTIPLE FAMILY RESIDENTIAL DISTRICT; AMENDING THE DISTRICT ZONING MAP ADOPTED BY ORDINANCE NO. 1480 OF THE CODE OF ORDINANCES, CITY OF GARDEN CITY, FINNEY COUNTY, KANSAS.”, was read and considered section by section. Commissioner Mesa moved to approve and pass Ordinance No. 2335. Commissioner Perkins seconded the motion. The vote was taken by yeas and nays and recorded as follows:

Behan	Crase	Fuller	Mesa	Perkins
Absent	Yea	Yea	Yea	Yea

Ordinance No. 2336. “AN ORDINANCE OF THE CITY OF GARDEN CITY, KANSAS APPROVING THE REZONING OF LAND FROM “C-O” OFFICE AND SERVICE BUSINESS DISTRICT TO “R-4” MULTIPLE FAMILY RESIDENTIAL DISTRICT;

AMENDING THE DISTRICT ZONING MAP ADOPTED BY ORDINANCE NO. 1480 OF 3 THE CODE OF ORDINANCES, CITY OF GARDEN CITY, FINNEY COUNTY, KANSAS.“, was read and considered section by section. Commissioner Perkins moved to approve and pass Ordinance No. 2336. Commissioner Crase seconded the motion. The vote was taken by yeas and nays and recorded as follows:

Behan	Crase	Fuller	Mesa	Perkins
Absent	Yea	Yea	Yea	Yea

Ordinance No. 2337. “AN ORDINANCE OF THE CITY OF GARDEN CITY, KANSAS APPROVING THE REZONING OF LAND FROM “C-O” OFFICE AND SERVICE BUSINESS DISTRICT TO “R-4” MULTIPLE FAMILY RESIDENTIAL DISTRICT; AMENDING THE DISTRICT ZONING MAP ADOPTED BY ORDINANCE NO. 1480 OF THE CODE OF ORDINANCES, CITY OF GARDEN CITY, FINNEY COUNTY, KANSAS.“, was read and considered section by section. Commissioner Perkins moved to approve and pass Ordinance No. 2337. Commissioner Crase seconded the motion. The vote was taken by yeas and nays and recorded as follows:

Behan	Crase	Fuller	Mesa	Perkins
Absent	Yea	Yea	Yea	Yea

Commissioner Behan arrived and assumed his position on the bench.

Ordinance No. 2338. “AN ORDINANCE PERTAINING TO THE “MHP” “MHS” MANUFACTURED HOME PARK AND MANUFACTURED HOME SUBDIVISION DISTRICT REGULATIONS; AMENDING SECTION 11.025 OF THE CONDITIONAL USES IN THE “MHP” DISTRICT OF THE ZONING REGULATIONS ADOPTED BY ORDINANCE NO. 1480; ALL TO THE CODE OF ORDINANCES OF THE CITY OF GARDEN CITY, KANSAS.“, was read and considered section by section. Mayor Fuller moved to approve and pass Ordinance No. 2338. Commissioner Crase seconded the motion. The vote was taken by yeas and nays and recorded as follows:

Behan	Crase	Fuller	Mesa	Perkins
Yea	Yea	Yea	Yea	Yea

Resolution No. 2221. “A RESOLUTION FIXING A TIME AND PLACE AT WHICH THE OWNER, OWNER’S AGENT, ANY LIENHOLDER OF RECORD, AND ANY OCCUPANT OF THE STRUCTURE MAY APPEAR AND SHOW CAUSE WHY THE STRUCTURE SHOULD NOT BE CONDEMNED OR ORDERED REPAIRED, OR DEMOLISHED AND REMOVED, PURSUANT TO SECTION 18-481, ET. SEQ., OF THE CODE OF ORDINANCES, CITY OF GARDEN CITY, KANSAS.”, was read and considered section by section. Commissioner Mesa moved to adopt Resolution No. 2221. Commissioner Behan seconded the motion. The vote was taken by yeas and nays and recorded as follows:

Behan	Crase	Fuller	Mesa	Perkins
Yea	Yea	Yea	Yea	Yea

City Attorney Randy Grisell reviewed the proposed ordinance to regulate smoking in public places. Considerable discussion was held over possible changes to the draft ordinance. The Governing Body instructed City Attorney Grisell to revise the ordinance with the changes involving effective date, deletion of the section regulation the percentage of motel rooms and clarification of the 50-foot clear area for the primary entrance or exit of a facility, and return it for immediate consideration.

Ordinance No. 2339. “AN ORDINANCE REGULATING SMOKING IN DESIGNATED PUBLIC PLACES; PROVIDING PENALTIES FOR VIOLATIONS; ESTABLISHING NEW ARTICLE IV TO CHAPTER 50 AND NEW CODE SECTIONS 50-72 TO 50-81; ALL TO THE CODE OF ORDINANCES, CITY OF GARDEN CITY, FINNEY COUNTY, KANSAS.“, was read and considered section by section. Commissioner Behan moved to approve and pass Ordinance No. 2339. Mayor



Fuller seconded the motion. The vote was taken by yeas and nays and recorded as follows:

Behan	Crase	Fuller	Mesa	Perkins
Yea	Yea	Yea	Yea	Yea

Mr. Roy Cessna, Chairperson of the Airport Advisory Board, was present to review projects undertaken, and goals identified by the Board. Enplanements were up 5% for July. Fuel prices are negatively affecting general aviation traffic. The Board intends on having Santa arrive to the airport via Great Lakes Aviation again this December along with inviting area schools to participate in an art contest. The work order program established by Aviation Director George Speake to keep minor maintenance from becoming major is working well. A strategic workshop was held to set short, medium and long range goals to maintain the airport’s focus on where the airport is heading in the future.

Ms. Sue Johnson, Chairperson of the Cultural Relations Board, was present to review projects undertaken, and goals identified by the Board. The Board has been working with the Garden City Community College to identify and recognize celebrations of various cultural holidays. The Board is preparing in case a need for transportation and medical facilities during the construction of the Sunflower Electric Corporation plants arises.

Mr. John Wire on behalf of Great Plains Development, Inc. reviewed with the Governing Body the services and operations performed by that organization on behalf of the City of Garden City. Mr. Wire stated Great Plains Development, Inc. has enjoyed a long-standing contractual and service relationship with both the city and county and asked that the City continue their membership with their company. Mayor Fuller moved to approve the payment of \$3000.00 for the annual membership to Great Plains Development, Inc. Commissioner Perkins seconded the motion. The vote was taken by yeas and nays and recorded as follows:

Behan	Crase	Fuller	Mesa	Perkins
Yea	Yea	Yea	Yea	Yea

City Engineer Steve Cottrell reviewed the proposed plans to establish a Dog Park at the Kansas Department of Transportation’s roadside park at Campus and Fulton. It was the consensus of the Governing Body to proceed with the Dog Park project at the site.

Mayor Fuller moved to approve the following:

- 1. Permission for Lupe Ortiz to reserve Space 2, Lot 55, Zone K, Valley View Cemetery for the period of one year for the consideration of \$50.00.
- 2. Quit Claim Deed from A. Renee Coates-Wigner transferring Spaces 1 & 2, Lot 742, Zone Brookover, Valley View Cemetery to the City of Garden City.
- 3. Licenses:

(2006 New)

  - a. Hale Construction LLC.....Roofing
  - b. Tri-County Electric Corp.....Electrical

(2006 Renewals)

  - c. A1 Concrete & Construction..... General

Commissioner Behan seconded the motion. The vote was taken by yeas and nays and recorded as follows:

Behan	Crase	Fuller	Mesa	Perkins
Yea	Yea	Yea	Yea	Yea

There being no further business before the Governing Body, Commissioner Behan moved to authorize the Mayor to adjourn the meeting. Mayor Fuller seconded the motion. The vote was taken by yeas and nays and recorded as follows:

Behan	Cruse	Fuller	Mesa	Perkins
Yea	Yea	Yea	Yea	Yea

\_\_\_\_\_  
Gary E. Fuller, Mayor

ATTEST:

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Stacey L. Frizzell, City Clerk

**City Commission Reports**

**Commissioner Behan** – No comment.

**Commissioner Cruse** – Would like to see the Farmer’s Market move to Pine Street.

**Mayor Fuller** – No comment.

**Commissioner Mesa** –No comment.

**Commissioner Perkins** –No comment.